

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

ROY DANIELS MORAGA,

Case No. 3:21-cv-00056-LRH-CLB

Petitioner,

ORDER

v.

WARDEN PERRY RUSSELL, et al.,

Respondents.

Roy Daniels Moraga has submitted a pro se 28 U.S.C. § 2254 habeas corpus petition (ECF No. 1-1). His application to proceed in forma pauperis is granted. As discussed below, the petition is dismissed as second and successive.

28 U.S.C. § 2244(b)(3)(A) provides: “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” Where a petition has been dismissed with prejudice as untimely or because of procedural default, the dismissal constitutes a disposition on the merits and renders a subsequent petition second or successive for purposes of 28 U.S.C. § 2244. *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005).

In July 1990, a jury convicted Moraga of two counts of burglary and two counts of sexual assault, and he was adjudicated as a habitual criminal. After a remand and an appeal from an amended judgment of conviction, the Nevada Supreme Court affirmed

1 in October 1995. Moraga filed a state post-conviction habeas corpus petition in
2 February 1996, and that proceeding, along with another coterminous state-court
3 proceeding, concluded following an appeal with the issuance of the remittitur in May
4 1999.

5 Moraga filed a timely federal habeas corpus petition in September 1999, under
6 Case No. 3:99-cv-00507-DWH-RAM, that ultimately was decided on the merits in
7 December 2008, under Case No. 3:03-cv-00220-LRH-RAM. The court of appeals
8 affirmed in February 2011, and the Supreme Court of the United States denied a
9 petition for a writ of certiorari in October 2011. In December 2013, the court of appeals
10 denied an application to authorize a second or successive petition in Case No. 13-
11 74048. Moraga then filed another federal habeas corpus petition, Case No. 3:14-cv-
12 00230-LRH-VPC. The court dismissed that petition as a second or successive petition
13 in May 2014. In July 2015, the court of appeals denied another application to authorize
14 a second or successive petition in Case No. 15-71503. Nevertheless, Moraga filed at
15 least two other successive petitions in this court. Case Nos. 3:16-cv-00532-RCJ-WGC;
16 3:18-cv-00330-LRH-WGC.

17 This petition, therefore, is a second or successive habeas corpus petition.
18 *Henderson*, 396 F.3d at 1053. Moraga was required to obtain authorization from the
19 Ninth Circuit Court of Appeals before he could proceed. 28 U.S.C. § 2244(b)(3).
20 Moraga has not indicated that he has received such authorization from the court of
21 appeals.

22 **IT IS THEREFORE ORDERED** that petitioner's application to proceed in forma
23 pauperis (ECF No. 1) is **GRANTED**.

24 **IT IS FURTHER ORDERED** that the Clerk detach and file the petition (ECF No.
25 1-1).

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DATED this 19th day of March, 2021

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE